IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 789 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

HARJI DEV GADHVI

Appearance:

1. Criminal Appeal No. 789 of 1986

MR. N.D. GOHIL, APP, for Petitioner No. 1

MR RN SHAH for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 11/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

The State of Gujarat has filed this appeal under Section 378 of the Criminal Procedure Code against the judgement and order of acquittal dated 5.4.1986 passed by the learned Sessions Judge, Kutch at Bhuj in Criminal Appeal No. 51 of 1984, after setting aside the judgement and order dated 30.7.1984 passed in Criminal Case No. 13 of 1983 by the learned J.M.F.C., Mundra convicting the respondents accused for the offences punishable under Sections 324, 325, 506(2) read with Section 114 of the I.P.C. The learned Magistrate sentenced each of the respondents accused to suffer rigorous imprisonment for four months and pay fine of Rs. 200/- and in default to undergo rigorous imprisonment for one month.

2. It is the case of the prosecution that on 10.11.1982 at about 12.00 noon the respondents accused went to the vadi of Nagsi Naran and attacked him and others. Accused No. 1, Harji Dev Gadhvi, had an axe; accused No. 2, Palu Harji Gadhvi, had Dharia while accused No. 3, Punsi Harji Gadhvi, was having an axe. According to the prosecution case, accused No. 1 caused injury on the head as well as on the right hand of Narsi Naran with axe while accused No. 2 caused injury on the head as well as right hand of Ratan Nagsi. Accused No. 3 caused injuries on the head as well as other parts of the body of injured Laxmibai. It is further the prosecution case that accused wanted father of the complainant to withdraw Civil Suit filed against the accused. As the father of the complainant did not agree to withdraw the Civil Suit, the accused got excited and started giving abuses to the father of the complainant and the other relatives of the complainant and thereafter caused injuries. The complainant saw the incident by standing at some distance and rushed to the spot no sooner he saw his father and relatives sustained injuries and profusely bleeding. The complainant thereafter called his uncle and other relatives and made arrangement for a bullock cart and took the injured to the hospital at village Bhujpur. Later on the complaint was filed at Mundra Police Station. The police after making necessary investigation filed the charge-sheet against the accused. The accused pleaded not guilty to the charge.

3. The learned Magistrate, after appreciating the evidence on record, as stated above, found all the accused guilty for the offences charged against them and accordingly passed the order of conviction and sentence against them. An appeal was preferred by the respondents accused against the said order of the learned Magistrate which was allowed by the learned Sessions Judge. Hence

the present appeal.

4. Mr. Gohil, learned A.P.P., appearing for the appellant State, after taking us through the relevant evidence, submitted that the learned appellate Judge has committed an error in acquitting the accused. According to the submission of the learned A.P.P., the incident in question had taken place in a broad day light and that the parties were known to each other. There was no reason to discard the evidence of the eye witnesses, some of them had sustained injuries.

5. Mr. R.N. Shah, learned counsel for the respondents accused, has, on the other hand, supported the judgement of the appellate Court in toto.

6. After having minutely examined the evidence on record, it does appear that Laxmibai Nagsi and Rajbai Shivraj have, in fact, sustained injuries which are established by the certificates produced on the record of the case at Exhs. 31 to 34. The learned appellate Judge found certain discrepancies in their evidence and therefore he has not taken into consideration the evidence of the injured witnesses. As far as Laxmibai's evidence at Exh. 25 is concerned, she has clearly deposed the part played by all the accused which includes the injury caused to her by accused No. 2. Her evidence is ignored on the ground that she did not pass certain information to the Court. Likewise, evidence of Nagsi Naran which is at Exh. 26 is not taken into consideration on the ground that he became unconscious after the incident and regained conscious after he was admitted in the hospital but the fact that he clearly involved accused No. 1 who caused injury to him. Likewise, evidence of Rajbai at Exh. 27 is not taken into consideration also on erroneous ground. The learned appellate judge, it appears from his reasoning, is much impressed with the fact that the complaint was filed very late and therefore, according to the learned judge, the possibility of falsely involvement of the accused cannot be ruled out. After having carefully considered the reasoning of the learned appellate judge, we are of the opinion that the learned appellate judge was not justified in interfering with the order of conviction passed by the learned Magistrate. Thus, in our opinion, the learned Magistrate was justified in convicting the accused, in view of the fact that the evidence of injured witnesses cannot be ignored and the incident in question had taken place in a broad day light and therefore, there was no question of any mistaken identity. In substance, the second view, in the instant case, is more probable, a

question arises for our consideration is whether this Court would be justified in interfering with the order of acquittal passed by the appellate Court when another view is possible? It is settled principle of law that the appellate Court can, in a given case, interfere with the order of acquittal if it finds that the Court below has overlooked the material fact and/or misread the evidence on record and thereby miscarriage of justice is caused. The case on hand being a clear case of misreading of evidence, we could have certainly interfered with the judgement of the appellate Court. However, in view of the fact that the incident in question had taken place way back on 10.11.1982 and the accused have been acquitted on 5.4.1986 for the offences punishable under Section 324, 325, 506(2) read with Section 114 of the I.P.C., we see no justifiable reason to set aside the order of acquittal passed by the learned Sessions Judge, Kutch at Bhuj even if second view is possible and when the State has not filed any appeal for enhancement of the sentence and the record also goes to suggest that the accused have undergone the sentence.

In the result, the appeal fails and is dismissed.

(K.R. VYAS, J)

(K.M. MEHTA, J)
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